

Children's Law Center of Indiana



CHINS

3/21/17

In ***In Re M.O.***, 72 N.E.3d 527 (Ind. Ct. App. 2017), the Court affirmed the juvenile court's determination that sixteen-year-old M.O. (Child) was a CHINS pursuant to IC 31-34-1-6 [substantial danger to self or others]. *Id.* at 533. Child is the mother of two young sons, J. and A. J. is the subject of a different CHINS petition, and is placed with Child's Father. At the time Child's CHINS case was initiated, Child and her infant son A. were living at the St. Joseph Carmelite Home in East Chicago, where Child had been placed by the probation department because of her juvenile delinquency case. On May 3, 2015, DCS received a report that the probation department was planning to close Child's case, and Child's placement in the Carmelite Home would end when the case was closed. A DCS case manager began an assessment, but Child refused to speak with her on the telephone. Father was not willing to have Child placed in his home due to Child's aggressive behaviors. Mother refused to take a drug test, which was a prerequisite to the Child's placement in Mother's home.

On May 27, 2015, DCS filed a CHINS petition alleging that Child was a CHINS pursuant to IC 31-34-1-1 (CHINS 1), which involves parental inaction or neglect. On June 25, 2015, Mother and Father filed a notice of intent to assert that Child was a CHINS pursuant to IC 31-34-1-6 (CHINS 6), which involves Child's own behavior of endangering herself or others. Child left the Carmelite Home at the end of June 2015, and was placed with her cousin, but ran away a week later after a confrontation with her cousin. On July 30, 2015, a pretrial conference was held, at which Child's DCS case manager recommended emergency shelter care for Child because no relative was able to handle Child's behaviors. Mother testified that Child could not live with her because Mother did not want to jeopardize her Section 8 housing, which she needed for herself and the three other children who were living with her. Child participated in the pretrial conference by telephone, but evaded the court ordered personal contact from the case manager. Child also refused to go to any DCS placements, and did not report in person to the juvenile court despite the court's order that she do so. A CHINS factfinding hearing was held on November 6, 2015, but Child did not appear. DCS had no contact with Child since the first week in August, and Child had been "on the run" since July. During the hearing, Child's DCS case manager testified that Father would consider allowing Child to live with him only if she successfully received mental health treatment due to his concern for the safety of other children in his home. The case manager did not recommend placing Child with Mother because numerous reports had been made to DCS on Mother's current home, Mother was allegedly in a relationship that involved domestic violence, and Child did not want to be placed with Mother. The juvenile court asked the case manager if she believed Child was a CHINS pursuant to CHINS 1 or CHINS 6, and the case manager replied that, based on her experience, she believed the child to be a CHINS pursuant to CHINS 6. After DCS finished presenting its evidence, Parents moved

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for judgment on the evidence as to DCS's claim pursuant to CHINS 1. The juvenile court found that DCS had failed to meet its burden on the claim of CHINS 1, and then allowed Parents to present evidence that Child was a CHINS pursuant to CHINS 6. Mother offered into evidence: (1) the transcript of the pretrial hearing, in which Child failed to appear and avoided meeting with the DCS case manager; and (2) emails between the case manager and a Carmelite Home staff member about Child's behavior while staying at the Home. Father testified: (1) Child was a threat to herself and others and in need of mental health treatment; and (2) Child had attempted suicide two years prior to the hearing. The juvenile court took judicial notice of its own records which showed that Child: (1) had sixteen referrals to juvenile court; (2) was a respondent in a termination of parental rights case for her son J.; (3) had been the subject of a previous CHINS case; (4) had five prior charges for being a runaway; (5) had previously failed referrals for services; and (6) had true findings for theft, resisting law enforcement, and modification of probation. The juvenile court found Child to be a CHINS pursuant to CHINS 6. Child appealed.

Finding that the issue of whether Child was a CHINS 6 was tried by consent under Ind. Trial Rule 15(B), the Court held the juvenile court did not err in adjudicating Child to be a CHINS on different grounds from those set forth in the CHINS petition. *Id.* at 532. Both Child and DCS argued that the juvenile court erred in adjudicating Child to be a CHINS pursuant to IC 31-34-1-6, because the CHINS petition filed by DCS alleged that Child was a CHINS pursuant to CHINS 1. The Court looked to *In Re V.C.*, 867 N.E.2d 167 (Ind. Ct. App. 2007), which resolved the issue of whether the trial court erred in adjudicating a child to be a CHINS on grounds different from those set forth in the CHINS petition. *M.O.* at 531. The Court reviewed Ind. Trial Rule 15(B), which states that issues not set out in the pleadings may be tried by the express or implied consent of the parties. *M.O.* at 531. The Court explained that either party may demand strict adherence to the issues raised before trial, and, if the court allows introduction of an issue not raised before trial, an objecting party may seek a reasonable continuance in order to litigate the new issue. *V.C.*, 867 N.E.2d at 178. *M.O.* at 531. The Court also noted that, where the trial court concludes without objection to the new issue, the evidence actually presented at trial controls. *V.C.*, 867 N.E.2d at 178. *M.O.* at 531. The Court also explained that there are limits to the amendment of pleadings through implied consent: (1) parties should be given some form of notice that an issue not pleaded is now before the court; and (2) this notice can be overt and expressly raised prior to, or sometime during, the trial or it can be implied "as where the evidence presented at trial is such that a reasonable competent attorney would have recognized that the unpleaded issue was being litigated." *V.C.*, 867 N.E.2d at 178. *M.O.* at 531. The Court said consent to the introduction of another issue will be found if DCS and Child had overt or implied notice that evidence was being presented that Child was a CHINS pursuant to CHINS 6. *Id.* at 532. The Court noted Parents filed a notice of intent to assert that Child was a CHINS pursuant to CHINS 6, and neither DCS nor Child objected to Parents' notice. *Id.* The Court opined this filing by Parents put DCS and Child on notice that Parents intended to present evidence that Child was a CHINS because she substantially endangered her own health or that of another, and that this issue would be raised at trial. *Id.* The Court said the purpose behind T.R. 15(B) is to provide parties with some flexibility in litigating a case, and to promote justice by permitting evidence brought in at trial to determine the liability of the parties. *Id.*

Based on the evidence presented at the factfinding hearing, the Court concluded it was proven by a preponderance of the evidence that Child substantially endangered her own health or the health of another individual, and that Child was a CHINS as defined by CHINS 6. Id. at 533. Child argued that the juvenile court erred in determining that she was a CHINS under CHINS 6 because there was insufficient evidence to support the adjudication. Child contended the evidence did not support that she substantially endangered her own health or that of another individual, and asserted that her actions were defiant and delinquent, but did not rise to the level of substantial endangerment. The Court looked to IC 31-34-1-6, and found there were three elements which were required to be proven for the juvenile court to adjudicate Child to be a CHINS under CHINS 6, namely: (1) Child was under the age of eighteen; (2) Child substantially endangered her own health or the health of another individual; and (3) Child needed care, treatment, or rehabilitation that she was not receiving and that she was unlikely to be provided or accepted without the coercive intervention of the court. Id. Because Child did not contend there was insufficient evidence to prove that she was under the age of eighteen or that she needed care, treatment, or rehabilitation, the Court focused only on whether there was sufficient evidence to prove that she substantially endangered her own health or that of another. Id. In support of the juvenile court's determination of endangerment, the Court noted the following evidence: (1) Child was only sixteen at the time the CHINS case was initiated and had a history of running away from her placements; (2) during the hearing the court spoke with Child on the telephone and ordered her to appear at court, but Child refused to do so; (3) Child was still on the run and did not appear at the show cause hearing a week after the court's order; (4) Child also remained on the run at the time of the factfinding hearing on November 6, 2015; (5) the court took judicial notice of the fact that Child had five prior charges for being a runaway. Id. The Court found the evidence that Child was on the run to avoid the authority of DCS and the juvenile court supported the trial court's determination that Child substantially endangered her health because "bad things could happen to a young girl out on her own trying to avoid authority." Id. The Court also noted the following evidence: (1) the juvenile court took judicial notice of its own records that Child had sixteen referrals to the juvenile court, was a respondent in a termination of parental rights case for her son, had been the subject of a previous CHINS case, had previously failed referrals for services, and had true findings for theft, resisting law enforcement, and modification of her probation; (2) Mother offered into evidence emails between the case manager and staff of Carmelite Home about Child's behavior during her stay at the Home; and (3) Father testified that Child was a threat to herself and others, in need of mental health treatment, and had attempted suicide two years prior to the hearing. Id. The Court opined the juvenile court did not err in adjudicating Child to be a CHINS pursuant to CHINS 6. Id.